

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

VERA STERLING,)
)
 Plaintiff,)
)
 v.) No. 1:05CV77 FRB
)
 THE VARSITY GROUP, INC./JOMAR)
 INVESTMENTS/DENNY'S,)
)
 Defendant.)

ORDER

Presently pending before the Court is defendant's Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted (filed October 13, 2005/Docket No. 24). All matters are pending before the undersigned United States Magistrate Judge, with consent of the parties, pursuant to 28 U.S.C. § 636(c). Plaintiff Vera Sterling is proceeding in this cause pro se.

Rule 8(a)(2), Federal Rules of Civil Procedure, requires a plaintiff to plead only a short and plain statement of the claim showing that the pleader is entitled to relief. A claim that does not state with precision all elements that give rise to a legal basis for recovery should not be dismissed if the Complaint, read in its entirety, provides sufficient notice to the opposing party of the claim made against it. See Robinson v. MFA Mutual Ins. Co., 629 F.2d 497, 500 (8th Cir. 1980). To the extent defendant argues that this pro se plaintiff failed to plead with precision all elements giving rise to her claims of employment discrimination, the motion to dismiss should be denied inasmuch as the Complaint provides sufficient notice to defendant of the claims made against

it. Id.; see also Duncan v. Delta Consol. Indus., Inc., 371 F.3d 1020, 1025 (8th Cir. 2004) (pro se employment discrimination claims to be liberally construed, but court may not create claim which was not made).

Further, it appears to the undersigned that in order to determine the issues raised in defendant's motion, the Court may well have to consider evidence outside of and in addition to the pleadings. Therefore, the issues raised in the motion are more appropriately addressed by way of a summary judgment motion, time for the filing of which has not yet been determined.

Therefore,

IT IS HEREBY ORDERED that defendant's Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted (Docket No. 24) is denied.


UNITED STATES MAGISTRATE JUDGE

Dated this 31st day of October, 2005.